



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0269]

RIN 1625-AA00

Safety Zone; Heavy Weather and Natural or Other Disasters in San Juan Captain of the Port Zone, San Juan, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone that would restrict vessels from transiting through certain navigable waters in the San Juan Captain of the Port (COTP) zone during periods of experienced or expected gale force winds (of 34 knots/39 mph or greater) and reduced visibility due to anticipated heavy weather periods, e.g., tropical storm, hurricane or due to any natural or other disasters where the restriction of vessel traffic is deemed appropriate by the COTP. This proposed rulemaking would prohibit vessel traffic transiting or remaining in the regulated areas unless authorized by the COTP, San Juan, Puerto Rico, or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2023-0269 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY**

INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Carlos M. Ortega-Pérez, the Waterways Management Division Chief, Sector San Juan Prevention Department, U.S. Coast Guard; telephone 787-729-2380, email Carlos.M.Ortega-Perez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
MTS	Maritime Transportation System
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

The purpose of the proposed regulation is to ensure the safety of the port and life on navigable waters of the United States by restricting movement of vessels and barges over 500 gross tons (GT) in the event of heavy weather conditions or any natural or other disasters anticipated to affect the San Juan Captain of the Port (COTP) zone. The COTP has determined that reduced or restricted visibility and gale force winds which may occur during heavy weather periods and other disasters affecting Puerto Rico and the U.S. Virgin Islands, constitutes a safety concern for the navigable waters and waterfront facilities within the San Juan COTP zone. This proposed regulation would ensure safety of vessels and navigable waters within the safety zone before, during, and after heavy weather conditions, e.g., tropical storms, hurricanes and any natural or other disasters to minimize potential danger to the inbound, outbound, and transiting vessels. Additionally, both natural and other disasters may occur that are outside of the scope of the previously mentioned events, that would require the restriction of vessel movements within the COTP zone to protect life, property and the Maritime Transportation System (MTS) of

Puerto Rico and the U.S. Virgin Islands. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone on certain navigable waters within the Sector San Juan COTP zone in response to anticipated heavy weather periods (*e.g.*, tropical storms and hurricanes) and any natural or other disasters that would restrict movement of vessels when the COTP sets specific Port Conditions, or deems such restrictions necessary, if the situation threatens the safety of vessels and mariners entering, departing, and transiting through ports located within the San Juan COTP zone. The movement of vessels and barges over 500 GT within navigable waters of the San Juan COTP zone, *i.e.*, ports of Puerto Rico and the U.S. Virgin Islands would be affected by this rule. Vessel movement restrictions would only apply to ports identified by the COTP forecast to experience gale force winds within an established threshold. The proposed rule would give the COTP flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and allows for expediting resumption of the MTS following disasters and severe weather.

The proposed rule includes safety zones that would have vessel movement limitation determined by each Hurricane Port Condition when established by the COTP while in hurricane season or while anticipating gale force winds, and any natural or other disasters within the San Juan COTP zone. Hurricane Port Conditions (WHISKEY, X-RAY, YANKEE, and ZULU) are standardized states of operation instituted by the COTP and shared with all major ports, facilities, and members of MTS) within the COTP zone. All stakeholders are required to work in unison to safeguard the MTS when faced with the annual challenges posed by tropical storms, hurricanes as well as other unforeseen disasters.

Notice of Port Conditions and their requirements will be given via Marine Safety Information Bulletins, online at <https://homeport.uscg.mil/port-directory/san-juan>, Broadcast Notice to Mariners, and during Port Coordination meetings.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

We expect the economic impact of this proposed rule to be not significant for the following reasons: (1) Vessel traffic and facilities will be impacted by this rule only during limited times while heavy weather or other disaster is expected to impact the Sector San Juan COTP zone; (2) vessel traffic would be secured only during port conditions Yankee and Zulu, and only in port areas potentially affected by gale force winds; and (3) the Coast Guard would issue updates on <https://homeport.uscg.mil/port-directory/san-juan>, Broadcast Notice to Mariners, and during Port Coordination meetings.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone of limited duration implemented during heavy

weather events e.g., tropical storms, hurricanes, or other natural disasters where a safety zone implementation is deemed appropriate by the COTP. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2023-0269 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov>. [Frequently Asked Questions](#) webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.791 to read as follows:

§ 165.791 Safety Zones; Heavy Weather and Natural or Other Disasters in San Juan Captain of the Port Zone.

(a) *Location.* The following area is a safety zone: All navigable waters, as defined in 33 CFR 2.36, within Sector San Juan Captain of the Port (COTP) zone, San Juan, Puerto Rico, as described in 33 CFR 3.35-25, during specified conditions.

(b) *Definitions.*
(1) As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP San Juan in the enforcement of the safety zone.

(b) *Definitions.*

(1) *Gale force winds* means sustained surface winds, or frequent gusts, of 34 knots (39 mph) or more usually seen in coastal regions.

(2) *Port Condition WHISKEY* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 72 hours.

(3) *Port Condition X-RAY* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 48 hours.

(4) *Port Condition YANKEE* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 24 hours.

(5) *Port Condition ZULU* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 12 hours.

(c) *Regulations.* (1) *Port Condition WHISKEY.* Open to all commercial traffic. All oceangoing vessels over 500 (GT) to report their intention to depart or remain in port. All oceangoing vessels over 500 GT intending to remain in port must contact the COTP prior to setting port condition X-Ray. All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of

the setting of Port Condition X-RAY. Ports and waterfront facilities must begin removing all debris and securing potential flying hazards. Container stacking plans must be implemented. Waterfront facilities that are unable to reduce container-stacking height to no more than four high must submit a container stacking protocol to the COTP.

(2) *Port Condition X-RAY*. Open to all commercial traffic. Remain in port applications will no longer be accepted without a COTP waiver. Vessels remaining in port may be issued COTP Orders to depart immediately. All vessels and port facilities must ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities must continue to implement container-stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within the affected regulated area. These vessels must depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in the port. Vessels with COTPs permission to remain in the port must implement their pre-approved mooring arrangement. Terminal operators must prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE*. The port is closed to all inbound vessel traffic except unless specifically authorized by the COTP. All oceangoing vessels greater than 500-gross tons without approved applications to remain in port shall depart designated ports within the Sector San Juan COTP zone at this time. Final mooring arrangements for vessels remaining in port. Appropriate container stacking protocol must be completed.

Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities must continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act.

(4) *Port Condition ZULU*. The port is closed to all vessel traffic except unless specifically authorized by the COTP. Cargo operations are suspended, including bunkering and lightering, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Waivers may be granted unless Cargo of Particular Hazard or Certain Dangerous Cargo is involved. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Regulation for Other Disasters*. Any natural or other disasters that are anticipated to affect the Sector San Juan COTP zone will result in the prohibition of facility operations and vessel traffic transiting or remaining in the affected port.

(6) Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the COTP via telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(7) Coast Guard Sector San Juan will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

Dated: June 08, 2023.

Robert M. Pirone
Captain, U.S. Coast Guard
Alternate Captain of the Port, San Juan

[FR Doc. 2023-12642 Filed: 6/12/2023 8:45 am; Publication Date: 6/13/2023]